

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

BLUE HERON FARM LLC, an
Oregon limited liability company,

Plaintiff,

v.

NORCAL NURSERY, INC.,
a California corporation

Defendants.

Case No. 6:19-cv-01403-MK

ORDER

MCSHANE, Judge:

Magistrate Judge Mustafa T. Kasubhai filed a Findings and Recommendation (ECF No. 50), and the matter is now before this Court on Defendant's objections. *See* 28 U.S.C. § 636(b)(1)(B), Fed. R. Civ. P. 72(b). I review *de novo*. *United States v. Bernhardt*, 840 F.2d 1441, 1445 (9th Cir. 1998). I find no error and conclude the report is correct.

Defendant objects to the Findings and Recommendation on three grounds. Def.'s Obj., ECF No. 52.

Defendant first argues that Judge Kasubhai "erroneously found that Plaintiff created a genuine issue of material fact as to whether the limitation of damages clause and warranty disclaimer were enforceable." Def.'s Obj. 2. However, the limitation of damages clause stated

“[c]ontract will be binding upon signing of this document[,]” and Plaintiff did not sign the sales confirmations in 2016 and 2017. F. & R. 6. As Judge Kasubhai noted, this alone is sufficient to show a genuine issue of material fact here. *See id.*

Defendant next argues that Judge Kasubhai “erroneously found that Plaintiff created a genuine issue of material fact as to whether parties’ course of conduct led to a common understanding that the terms and conditions of the sales confirmations and invoices controlled.” Def.’s Obj. 2. Because the parties dispute their understanding of the limitation of damages clause, Plaintiff has shown a genuine issue of material fact here. *See* F. & R. 10.

Finally, Defendant argues that Judge Kasubhai “erroneously found that the express warranty disclaimer is inoperative.” Def.’s Obj. 2. However, as Judge Kasubhai noted, the description of the goods in the same document as the warranty disclaimer are clearly contradictory, and “no reasonable construction of Defendant’s express warranty disclaimer can resolve this inconsistency.” F. & R. 15.

Magistrate Judge Kasubhai’s Findings and Recommendation (ECF No. 50) is adopted in full. Defendant’s partial Motion for Summary Judgment (ECF No. 34) is GRANTED as to Plaintiff’s negligence claim and DENIED as to Plaintiff’s breach of warranty claim and damages. The parties have thirty days to consent to trial before a magistrate judge. If the parties do not consent, the case will be reassigned to Judge Michael J. McShane.

IT IS SO ORDERED.

DATED this 18th day of July, 2022.

s/Michael J. McShane

Michael McShane
United States District Judge